

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JAMES M. MALARIK,)	
)	
Petitioner,)	Civil Action No. 08-740
)	
v.)	
)	Magistrate Judge Caiazza
KELLY LYNN CRAWFORD, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

James M. Malarik's Petition for Writ of Habeas Corpus was received by the Clerk of Court on May 29, 2008. He argues that his state court sentence for a violation of his probation is, in effect, a violation of Double Jeopardy since he has also been sentenced for the same offense in a separate criminal proceeding. The Petitioner has filed a Motion for Bail Bond and Detainer Lift (Doc. 11).

Motions for bail pending disposition of a habeas petition may be granted:

'When the petitioner has raised substantial constitutional claims upon which he has a high probability of success, and also when extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.'

Landano v. Rafferty, 970 F.2d 1230, 1239 (3d Cir. 1992), quoting, Calley v. Callaway, 496 F.2d 701, 702 (5th Cir. 1974). The court in Landano went on to note that the requisite "extraordinary or exceptional circumstances" have been found to exist in few cases,

but that bail has been granted in "situations involving poor health or the impending completion of the prisoner's sentence." 970 F.2d at 1239.

Here, the Petitioner's Double Jeopardy claim has been presented to, and was rejected by, the state courts. It does not appear that Malarik has a "high probability" of success on the merits, and the motion should be denied on this basis. Malarik has also attached a brief letter from a physician noting that Malarik has been diagnosed with schizophrenia, and that he is presently "symptomatic." (Doc. 11, Ex. 1). There is no indication that Malarik is being denied treatment for his condition. Hence, this is not a situation in which "poor health" would justify the extraordinary relief of bail pending resolution of the instant habeas petition.

AND NOW, this 18th day of June, 2008,

IT IS HEREBY ORDERED that the Motion for Bail Bond and Detainer Lift (Doc. 11) is DENIED.

s/Francis X. Caiazza
Francis X. Caiazza
United States Magistrate Judge

cc:
JAMES M. MALARIK
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Allegheny County Jail
950 Second Avenue
Pittsburgh, PA 15219